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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Rocking Horse Industries, Inc.

Serial No. 76/041,218

Jerry J. Dunlap of Dunlap Coddling & Rogers for Rocking Horse Industries, Inc.

Anne C. Endieveri, Trademark Examining Attorney, Law Office 109 (Ronald Sussman, Managing Attorney).

Before Cissel, Quinn and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Rocking Horse Industries, Inc. sought to register:



on the Principal Register for "hats and caps" in

International Class 25.<sup>1</sup>

<sup>1</sup> Application Serial No. 76/041,218 was filed on May 4, 2000, based upon applicant's claim of use on hats and caps as of July 1, 1995 and use on hats and caps in interstate commerce as of December 1, 1995.

This case is now before the Board on appeal from the final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has held that applicant's mark, as used in connection with hats and caps, so resembles the mark PUTTER PANTS that is registered for "men's and young men's trousers," also in International Class 25,<sup>2</sup> as to be likely to cause confusion, to cause mistake or to deceive.

Responsive to the refusal to register, applicant argues: that the marks are different in appearance, sound and meaning; that trousers and headgear are not placed in proximate areas in the retail setting; and that registrant's trousers and applicant's headgear are not necessarily directed to the same customers.

On the other hand, the Trademark Examining Attorney argues: that applicant's mark is highly similar to the registered mark in sound, meaning and overall commercial impression; that the goods herein are closely related as they could well be worn together while golfing; and, that these respective goods will move through the same channels of trade to the same class of consumers.

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<sup>2</sup> Registration No. 574,720, issued on May 19, 1953; second renewal. The word PANTS is disclaimed apart from the mark as shown.

Both applicant and the Trademark Examining Attorney have fully briefed the case. However, applicant did not request an oral hearing before the Board.

We affirm the refusal to register.

In the course of rendering this decision, we have followed the guidance of In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973). This case sets forth the factors that should be considered, if relevant, in determining likelihood of confusion.

Turning first to the similarities/dissimilarities in the marks, the Trademark Examining Attorney contends that applicant's mark is highly similar to the registrant's mark because the PUTTER/PUTTERS portions of the marks are essentially identical, that in both cases the connotation is reminiscent of a special type of golf club, and that the generic term "pants" in the cited mark for trousers cannot serve to avoid a likelihood of confusion herein.

By contrast, applicant argues as follows:

When PUTTERS and PUTTER PANTS are compared with one another, it becomes clear that the marks are not similar in sound. The semantic and phonetic differences between PUTTERS and PUTTER PANTS are apparent. In addition, Applicant's mark, PUTTERS, is highly stylized being characterized by the T's of the mark being in the form of golf club putters. The mark, PUTTERS, creates a significantly different commercial impression by appearance than PUTTER PANTS

so as to avoid a likelihood of confusion. The differences in pronunciation and visual appearance are clear. Moreover, the presence of the word "PANTS" in PUTTER PANTS suggests Registrant's mark has a different idea or meaning than that of the mark PUTTERS... ."

(Applicant's appeal brief, p. 3).

On this factor, we agree with the Trademark Examining Attorney, and find that the marks are confusingly similar. Clearly, because consumers have imperfect memories, the test we employ under the Lanham Act is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the commercial impressions they create are similar.

As to the appearance of these two marks, the only distinctive source-indicating matter in registrant's mark is the word PUTTER. Though incorporating design features, applicant's composite is essentially just the word PUTTERS. Applicant's use of the outline design of golf putters to represent the letters "TT" represents a clever design feature, but not one that creates a legally significant difference in the overall appearance of the marks. Moreover, as noted by the Trademark Examining Attorney, the word PANTS in a mark for trousers cannot be considered to be a significant source-identifying component of the cited mark. While the marks at issue must be considered in their

entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to a dominant feature [the word PUTTER in PUTTER PANTS] in determining the commercial impression created by the mark. See In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

As to sound, when asking for these respective goods, prospective consumers will call for PUTTER PANTS or PUTTERS caps. In this context, the pluralization of applicant's mark is not significant in terms of the likelihood of confusion of purchasers. See In re Pix of America, Inc., 225 USPQ 691, 692 (TTAB 1985) [NEWPORTS for shoes versus NEWPORT for outer shirts]; and Mushroom Makers, Incorporated v. R.G. Barry Corporation, 580 F.2d 44, 199 USPQ 65 (2d Cir. 1978) [MUSHROOMS for footwear versus MUSHROOM for sportswear].

Accordingly, when comparing these two marks in their entireties -- even in the event that PUTTER PANTS may conjure up non-golfing images of one "puttering around" -- we find that the strong similarities of sight and sound outweigh any such difference in connotation, supporting a finding of similar overall commercial impressions.

Turning next to the relationship of the goods, the Trademark Examining Attorney notes that applicant has largely conceded a relationship between these goods:

Applicant does not argue that the goods are not complementary and related, but rather that there is enough dissimilarity between the marks [earlier du Pont factor] to overcome the likelihood of confusion.

(Trademark Examining Attorney's appeal brief, p. 5).

Indeed, applicant argues rather cautiously in its appeal brief that "... though the goods may share the same channels of trade, they may not necessarily be proximate to one another and may not share the same customers."

(Applicant's appeal brief, p. 4). Among the recorded decisions finding the relationship of many different combinations of items of apparel, this Board has found that pants and headwear are related goods for purposes of making likelihood of confusion determinations. See John B.

Stetson Company v. Glove Rubber Works, Inc., 180 USPQ 655

(TTAB 1973). As pointed out by the Trademark Examining Attorney, to the extent that pants and headwear may both be directed to golfers, they may well be purchased with the thought of having one complement the other. Accordingly, we hold that applicant's hats and caps are related to registrant's pants.

Finally, in discussing two other du Pont factors that seem to flow from the above discussion about the relatedness of these goods, we agree with the Trademark Examining Attorney that the goods of registrant and of applicant must be presumed to move through the same channels of trade to the same class of purchasers.

To summarize, we find that confusion is likely because the marks of registrant and applicant are similar in overall commercial impression and pants and headwear are related products, sharing the same channels of trade.

Decision: The refusal to register under Section 2(d) of the Act is affirmed.